

**SUPREME COURT MINUTES
TUESDAY, DECEMBER 7, 2004
SPECIAL SESSION – SAN DIEGO, CALIFORNIA**

The Supreme Court of California convened in the courtroom for a special session at the Superior Court of California, County of San Diego, University of San Diego, School of Law, Joan B. Kroc Institute of Peace and Justice, 5998 Alcalá Park, San Diego, California on Tuesday, December 7, 2004, at 9:00 a.m.

Present: Chief Justice Ronald M. George, presiding, and Associate Justices Kennard, Baxter, Werdegar, Chin, Brown, and Moreno.

Officers present: Frederick K. Ohlrich, Clerk; and Gail Gray, Calendar Coordinator.

Opening Remarks: Historical Special Session
(Morning session)

CHIEF JUSTICE GEORGE: Good morning. It is with great pleasure that I welcome all of you to this special session of the California Supreme Court. I would like to begin by introducing my colleagues on the bench: To my immediate right is Justice Joyce Kennard; to her right is Justice Kathryn Werdegar; and to her right is Justice Janice Rogers Brown. To my immediate left is Justice Marvin Baxter; to his left is Justice Ming Chin; and to his left is Justice Carlos Moreno. We are assisted in this special session, as we are in so many endeavors, by the court's very able Clerk/Administrator, Fritz Ohlrich.

I would now like to call upon Fourth Appellate District Administrative Presiding Justice Judith McConnell.

JUSTICE McCONNELL: Mr. Chief Justice and Associate Justices: On behalf of the Court of Appeal, Fourth District, Division One, welcome to San Diego.

Over a year and a half ago, Professor Hugh Friedman suggested there could be no better way to celebrate the 50th anniversary of the University of San Diego School of Law than to have the California Supreme Court sit here in special session. Through the hard work of many people, that vision is now a reality.

To make your visit to San Diego a worthwhile educational experience, we have enlisted the efforts of many--from our staff at the Court of Appeal, from the Superior Courts of San Diego and Imperial Counties, from the San Diego County Bar Association and many attorneys. I must give special recognition to Associate Justice Joan Irion for her tireless efforts and to San Diego County Superior Court Presiding Judge John Einhorn and Assistant Presiding Judge Janis Sammartino as well as Imperial County Superior Court Presiding Judge Raymond Cota for their assistance.

Our goal was to use this event as an opportunity to educate young people about the role of the court as the third branch of government in our democracy and about the rule of law. We can show them firsthand the important work that lawyers and courts do in ensuring a just society.

We have invited every high school in San Diego and Imperial Counties to participate and received an overwhelming response. Many students are watching this morning's court session on television and their appreciation and understanding of the cases and the proceedings will be enhanced by the teams of trial judges and lawyers who have gone out to the schools to aid in the learning experience.

In addition, over 1,200 students will attend argument during these two days. Students from 34 high schools will be able to personally observe oral argument.

We have prepared written materials on the court's web page that include case summaries, study guides and links to the briefs as well as links to other law-related sites that discuss law as a career.

We hope you enjoy being in San Diego and are deeply honored by your visit.

CHIEF JUSTICE GEORGE: Thank you Justice McConnell. And now we shall hear from Dean Daniel Rodriguez of the University of San Diego School of Law.

DEAN DANIEL RODRIGUEZ: Mr. Chief Justice and Associate Justices of the Supreme Court. On behalf of the University of San Diego School of Law, we are delighted and pleased to welcome you to the university. Thank you very much for enabling us to continue to commemorate our 50th anniversary in existence as a law school here in San Diego. And thank you to Justice Judith McConnell and her

colleagues on the California Court of Appeal for their invaluable assistance in helping make this happen.

We are extremely proud of our 50th anniversary and we have had a number of special events to commemorate this anniversary during the past year. We have been able to welcome four justices of the United States Supreme Court: Justices O'Connor, Scalia, Stevens and Thomas to the law school, and also distinguished lecturers from law, government and academia.

This visit from the California Supreme Court is a perfect capstone to these activities. And again, thank you to the Chief Justice and the Associate Justices for making this happen. It is especially valuable, as Justice McConnell mentioned, in drawing together the community, including faculty, students and staff of the university, lawyers and judges from the San Diego region, and high school students from all over San Diego, all coming together to learn about civics and government in action. In particular we learn from our attendance at these oral arguments about how a major institution in our state helps protect and nurture the rule of law in a democratic society.

We are especially pleased to welcome to this event distinguished members of the University of San Diego, including our faculty and alums. *Your* work, *their* work, on behalf of justice in our state and our nation, enriches the public interest and stands as an apt model for what our law school has endeavored to do for a half century and which it is committed to do for the next 50 years and beyond.

This special session held here at our law school is not only a fitting and special end of our anniversary celebration but is also a keen reminder of the tasks before us all in the legal community and the promise of an even brighter future for us as we renew our efforts in legal education and the promotion of justice here at the University of San Diego School of Law.

Again, thank you.

CHIEF JUSTICE GEORGE: Thank you Dean Rodriguez for your remarks and for your hospitality at the University of San Diego School of Law.

All across California, courts have been working to increase meaningful access to the courts and to improve our ability to serve the public. To reach these goals, courts have engaged in a wide variety of community outreach efforts.

Our purpose at the Supreme Court in embarking on sessions such as today's is to further these efforts. Our goal has been to better acquaint the public with the role of the courts and to better acquaint the courts with the concerns and interests of the public.

The California Supreme Court generally hears oral argument in three locations: San Francisco (where we maintain our headquarters), Sacramento, and Los Angeles. Over the last few years, we have ventured beyond these sites and have held similar sessions in San Jose and Fresno, as well as in the Old Orange County Courthouse as part of the celebration of the 100th anniversary of that historic building and of that county's bar association.

Today we recognize another anniversary. My colleagues and I are very pleased to convene this session in San Diego and to participate in the final event celebrating the 50th Anniversary of the University of San Diego School of Law.

We are present at the Joan B. Kroc Institute for Peace and Justice. This hall is large enough to accommodate a large number of spectators, and that is appropriate because we are here today not only to celebrate, but also, we hope, to inform and educate. The courts and schools of San Diego and Imperial Counties, the Fourth District Court of Appeal, the San Diego Bar Association, the University of San Diego School of Law, and the Administrative Office of the Court's Education Division all have participated in an outstanding effort to transform these events into prime opportunities for teaching and learning.

Once the Supreme Court decided to accept the invitation graciously extended to us by the University of San Diego legal community, planning began in earnest. Every high school in San Diego County, public and private, was contacted, as well as the Superintendents of Schools in San Diego and Imperial Counties. Teams of judges, lawyers, and law students were assembled to facilitate

discussions about the court system, the legal process, and the specific cases the court will be hearing today.

Today and tomorrow, more than 1200 high school seniors will be personally attending oral argument in this auditorium. At 15 off-site locations, judges and attorneys will be visiting schools to watch the court session with the students on cable television, courtesy of the California Channel — and they will be available to lead discussions on what they have seen. In fact, the California Channel has broadcast our past special sessions, and the oral arguments today and tomorrow again will be available through the channel's statewide affiliates. Together we are electronically expanding the walls of the courtroom — and of the classroom.

Tomorrow, the specialty bar associations in San Diego will be bringing in the law students they are mentoring to watch the afternoon court session.

Written materials related to this project have been made available online on the California court system's Web site — *www.courtinfo.ca.gov*. The materials include case summaries, study guides, and links to the briefs actually filed in the cases. Other links provide background information on the law and on careers in the law, the court system, legal assistance, and a host of useful sites.

These programs have proved to be an extraordinary educational opportunity — not only for the community, but also for our court. These achievements would not be possible, however, without the invaluable assistance of the justices and staff of the Fourth Appellate District, as well as local superior court judges. The contributions of court staff, including attorneys, clerks, judicial assistants, the Fourth District's librarian, and the judicial protection officers, were crucial. Members of the bar helped develop the materials made available in conjunction with this hearing, and school personnel have coordinated site visits and classroom programs to effectively reach students across the area.

Members of the bench and bar are in classrooms at this time with groups of high school students in San Diego and Imperial counties, and the educational authorities in these areas are to be commended for enthusiastically embracing this opportunity. I understand that the preparations have been so intense and engaging that in some classrooms, students already have decided the correct outcome of the cases and stand ready to share their conclusions.

The University of San Diego School of Law has been a gracious and helpful host. Dean Rodriguez and the distinguished faculty have played an active role in making this event a success. The School of Law has a long history of community involvement and interest in the development of means to enable the law to better serve community needs. This is reflected in the school's programs such as its Center for Public Interest Law, Children's Advocacy Institute, Environmental Law Clinic, Immigration Clinic, Entrepreneurship Clinic, and Low-income Taxpayer Clinic.

In summary, the oral arguments being heard by the court will have significance beyond the direct participants. They will constitute a valuable and insightful learning experience not only for students, but for other members of the public who might otherwise never ponder what transpires at a session of the California Supreme Court.

The members of the court hope that this special session stirs the interest of the students here today, and of others watching electronically, in understanding more about the legal system and the rule of law that protects us all. Perhaps one day, some of the students listening attentively will be in our seats, or sitting at the counsel table ready to present crucial arguments that will help shape the future of the law. I certainly hope so.

Once again, on behalf of the California Supreme Court, I want to indicate how pleased we are to be here today and our great appreciation to all who have made this program possible. This experience demonstrates once again that the courts, the bar, educators, and the community at large, working together, can produce extraordinary results that benefit us all.

The court will now entertain questions from students present in the courtroom.

STUDENT: Mr. Chief Justice and Associate Justices of the Supreme Court. My name is Justine Albano. I am from Otay Ranch High School and I would like to ask: How difficult is it to set aside your moral beliefs and standards and your personal experiences in applying the law and making a judicial decision?

CHIEF JUSTICE GEORGE: All right. Thank you, that was a very profound question. All judges must do their best at the trial level or an appellate court such as ours to put aside their personal beliefs and experiences in deciding a case. The basic function of a judge is to apply the law to the facts in the particular case, and in our system of law and government, everyone has to play by the same rules, whether the person is rich or powerful or poor or weak. Everyone is equal before the law. So imagine if we had, let's say, an umpire who decided that a player with two or four strikes, instead of three, should be out. So, if the law should be changed, then the judicial branch leaves it to the other two branches of government or the people through the initiative process to change the law, but it is not our function to do that. As judges we apply the law as it is, even if we think on occasion that a law may not be a wise law.

Thank you for your question.

STUDENT: Thank you, your honor.

STUDENT: Good morning to the Chief Justice and my name is Siroma Him and I am a senior at the Pruess School UCSD and I would like to ask: What determines how a case reaches the California Supreme Court? How does a case reach the California Supreme Court? Does it have to be urgent? What are some common cases seen by the California Supreme Court?

CHIEF JUSTICE GEORGE: Thank you for your question. Justice Kennard will respond.

JUSTICE KENNARD: In California lawsuits are tried by a judge or by jury. The losing party can, if he wishes, file an appeal with the Court of Appeal. And in this State there are several Courts of Appeal. At the Court of Appeal level cases are decided by the three-judge panel and the decision is made by majority vote. The losing party in the Court of Appeal can then seek review before the California Supreme Court and, like the United States Supreme Court, our court has discretion in determining in which case to grant review. Generally, we grant review when a case presents a conflict among the various Courts of Appeal or when a case presents an issue of statewide importance. Each of these cases heard by our court led to a written decision. And before the written decision, there is oral argument. Each case has to be decided 90 days after oral argument. And when you are here,

pay attention to what the Chief Justice says at the conclusion of each case. He utters the magic words, after thanking the attorneys, “The case stands submitted.” That means, the moment that it is said, the case has to be decided 90 days after oral argument.

By the way, there is one category of cases that bypasses the Court of Appeal. These are cases in which the defendant has been sentenced to death. Unlike other cases, in which the losing party files an appeal in the Court of Appeal, these cases under provisions of state law or under the provision of the Constitution are heard directly in our court and they are referred to as automatic appeals. That means that, even though a defendant who has been sentenced to death wouldn’t want to appeal, this court, nevertheless, reviews very carefully the proceedings and the entire trial that eventually led to the judgment of death. We determine whether the proceedings were held fairly and impartial. This explains why the death penalty cases are referred to as automatic appeals.

CHIEF JUSTICE: Thank you.

STUDENT: You are welcome.

STUDENT: Good morning, Mr. Chief Justice and Associates of the Court. My name is Cesar Rodriguez and I’m from Miramar College and I would like to ask you a question: What are your various responsibilities as a Justice of the California Supreme Court?

CHIEF JUSTICE: Thank you for your question. Justice Baxter will respond.

JUSTICE BAXTER: Thank you, Cesar for that thoughtful question. I think first of all we need to put things in perspective. California’s judicial system is the largest in the world. It may surprise many people here to know that it is actually larger than our federal system. And the California Supreme Court, which is the court of last resort for issues of state law, sits at the apex of this court system. The seven members of our court review the opinions of 100 judges of the Courts of Appeal who sit in six separate districts throughout the State of California and who in turn review the decisions of over 1,600 trial judges sitting in our 58 counties. So we must by necessity be very selective in granting review of cases. Of the more than 8 million lawsuits filed annually in this state, the Supreme Court will

only have the opportunity to issue opinions in slightly over 100 cases. Justice Kennard has touched on some of the responsibilities of the members of the court and I'll just mention them briefly again. First, and foremost, is the most important responsibility of reviewing death penalty judgments. Nothing can be more important than that responsibility. As to the other cases that come before the California Supreme Court, cases that come before us by discretion, which would be the noncapital criminal cases and also the civil cases. Those cases come to us by petitions for review and the decision that is made in our Wednesday conference of deciding which case or which cases to review is another responsibility that we have. In any case that comes before the court, our job is to carefully consider the legal issues that are raised in briefs, to conduct the legal research necessary to reevaluate the contentions the parties are making, and to carefully consider the matter during oral argument. And finally, the written opinion must be crafted with care to resolve the issues between the parties and to provide clear guidance in the future for others. So, in a nutshell, the judges and their staffs work very hard to fulfill these responsibilities.

Thank you.

CHIEF JUSTICE GEORGE: Thank you for your question.

STUDENT: Mr. Chief Justice and Associate Justices of the Supreme Court. My name is James Willis and I am from the Family Judges Center San Diego Teen Court, Incorporated, and I would like to ask: What advice would you give to a high school student who is interested in becoming an attorney and perhaps one day a Supreme Court Justice?

CHIEF JUSTICE GEORGE: All right, that ambitious question will be directed to Justice Werdegarr.

JUSTICE WERDEGAR: Thank you, James. You asked that question very well. You have one of the skills, which is oral presentation. In high school I would say aspiring to become an attorney, hone your thinking and analytical skills and your writing skills. Writing skills are very important and so is oral presentation. Of course, then you would go to college. I would say there is no particular major that you should have in planning to go to law school. A broad background, knowledge

of history and political science is good, but I know fine attorneys and judges who have come from a background of math or science. So that is the beauty of law. Many different backgrounds can pursue it. Of course, then you go to law school. How do you become a Supreme Court justice? Having watched the video here, I think you will see that each of us comes from a varied background. Your background can become one of private law practice, administrative agencies or government service. Qualities you should always have manifested in your profession include the highest ethical or moral principles. It would be very helpful to be active in your bar association and your community. Of course, to excel in the line of practice or career in the law. Then the truth is, it is question of timing and good fortune. It is what the appointing authority, and that would be the Governor of our State or the President of the United States, what that individual is looking for when there does become a vacancy. So it is like so much else – you bring to the front your skills and abilities, and then you hope that chance favors you.

So thank you, very much.

STUDENT: Thank you, your honor.

CHIEF JUSTICE: Thank you for your question.

STUDENT: Mr. Chief Justice and Associates Justices of the Supreme Court. My name is Michael Hayden and I am substituting for Diana Hill who is not able to be here today. I am from Miramar Community College, home of the police academy and I would like to ask: What are the procedures followed by the California Supreme Court in deciding a case?

CHIEF JUSTICE GEORGE: All right, Justice Chin will respond to your question.

JUSTICE CHIN: Michael, that is excellent question and much has already been answered by Justice Kennard and Justice Baxter. You already know that there is a difference between automatic appeal and discretionary review. Justice Baxter mentioned the Wednesday conference, that is when we exercise that discretion as to whether or not to grant review. On the automatic appeals, those are assigned as they come in; as the death judgments are rendered in the trial courts, they are automatically appealed to the Supreme Court and they are assigned to chambers

in order. Once the cases are fully briefed, the particular chamber that has that case will start to draft what we call a calendar memo. In the case of discretionary review, it takes four votes of the members of this court to grant review. If it is granted, the Chief Justice will either keep the case himself or assign it to one of the associate justices. Once the case is briefed by both sides, the chamber that is assigned that particular case will begin to research the case. We will eventually file a calendar memo proposing to the court a resolution of that matter. It is sent out to all of the judges of the court. We then have certain period of time in which to respond with what we call preliminary responses, where we say: I concur in the calendar memo, I concur with reservations, I am doubtful, or, if it stays the same, I'll be writing a dissent. Now, once the case gets four affirmative votes, it is usually set for oral argument and that brings us to today, and then the parties come to oral argument, the attorneys present to the court their arguments, answer the court's questions. Immediately after the argument, we go into conference and we vote on each case that we have just heard. If the original drafter of the calendar memo maintains a majority, that chamber will write the final opinion. As Justice Kennard said, that opinion has to be filed within 90 days of the date of submission.

Thank you for your question.

STUDENT: Thank you very much, your honor.

CHIEF JUSTICE: Thank you.

STUDENT: Good morning. Mr. Chief Justice and Associate Justices of the Supreme Court. My name is Juliana Baxter and I am from Otay Ranch High School and I would like to ask: How difficult is it to find a balance between protecting the rights of the individual and the needs of society and order?

CHIEF JUSTICE: Thank you for your question. Justice Brown will respond to it.

JUSTICE BROWN: Juliana, that is a great question. It really deserves a seminar because it goes right to the heart of problem of founding and maintaining a free government, and it is a very difficult task. The genesis of the American Constitution was the Framers' audacity in attempting to combine stable government with liberty. So the short answer to your question is, it is an extremely difficult balance to achieve. But the Framers were actually very much

aware of that difficulty. One of my favorite quotes on this subject comes from James Madison who a lot of people regard as the architect of our Constitution and who says in The Federalist No. 51: If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. But he said, in framing government which is administered by men over men, the great difficulty lies in this: You must first enable the government to control the governed and the next place oblige it to control itself. So Madison was a master of the balance and you probably learned in your studies that it is much easier said than done. And one of the reasons for that is because our governmental and political institutions are only part of this equation. The other part is the character and attitudes of the citizens themselves. De Tocqueville, when he was looking at the American democracy in the 1830's, said: "You know, America is unusual because its revolution was marked by a love of law and order and it was never believed in the United States that a citizen of a free country could do anything they wanted to do. In fact, he said they had more social obligations imposed on them than elsewhere. And that was actually, one of the concerns that led to the desire to have a public school system so that citizens would be able to shoulder this heavy burden of civic responsibility and would be committed to the rule of law and have the self-discipline and self-restraint vital to the proper exercise. So it is difficult on both sides of the equation and it is only when the citizens are determined to preserve the spirit of liberty that the job of the courts, which always will be difficult, will just get a little easier.

CHIEF JUSTICE GEORGE: Thank you. Yes, we will hear our next question.

STUDENT: Mr. Chief Justice and Associate Justices of the Supreme Court. My name is Phillip Willis III. I am from Family Justice Center of San Diego Teen Court, Incorporated and I would like to ask: What was your career path in becoming a Justice of the California Supreme Court?

CHIEF JUSTICE GEORGE: I will ask Justice Moreno to answer that question since I think he has one of most interesting career paths to this court.

JUSTICE MORENO: Thank you, Chief and thank you, Phillip. After graduating from law school, I practiced law for four years. First, as a city prosecutor handling primarily civil cases and consumer protection type cases. Then I switched for seven years to a commercial business law firm handling strictly civil cases. So my 11 years of experience as a lawyer, pretty much

exclusively was in civil litigation, that is, going to court on behalf of clients as opposed to negotiating and writing contracts or practicing some other type of law. After that I had the privilege of serving the next 15 years on three different trial courts, both in the state and federal judicial systems, handling a mix of both civil and criminal cases. Then I had the honor of being appointed to this court three years ago, and I am the most junior justice on the court. As you can see and you have heard on the video, there are different paths to becoming a Supreme Court justice. All of us have extremely varied backgrounds and experiences and I think that kind of diversity of experience and background can only add to the equality of trust that is rendered by our court. No one sets out to become a Supreme Court justice, believe me. There is no set career path in becoming a justice or even a judge. As my colleague Justice Werdegard indicated, I think most of us would agree that it takes a combination of hard work, good fortune, and a good track record as a lawyer and a judge to become a justice on any appellate court.

So thank you for your question, Phillip.

STUDENT: Thank you, Justice.

CHIEF JUSTICE: Thank you for your question. All right.

STUDENT: Good morning. Mr. Chief Justice and Associate Justices of the Supreme Court. My name is Cynthia Ortiz and I am from Miramar Community College and I would like to ask: How are death penalty cases handled at the trial court and on appeal?

CHIEF JUSTICE: Of course, not every kind of homicide, unlawful killing of a human being, is eligible for the death penalty. So at the trial level there may be increasing levels of severity: involuntary manslaughter, a voluntary manslaughter, second degree murder conviction, first degree murder conviction, and not even all first degree murder convictions render a defendant eligible for the death penalty. And by the way, I should indicate that first degree murder involves usually a commission of another crime in the course of the murder, that is, robbery, rape or so forth or premeditation. Then, only if the prosecutor has charged something that is called the special circumstance will that bring forth a second phase to the trial, if that special circumstance is found true. And if the jury finds the defendant guilty

of murder in the first degree with one or more special circumstances (which also can include multiple murders, by the way) then there is a second phase and the prosecution offers evidence of aggravation, showing that because of the defendant's background, in terms of prior convictions, then perhaps that person is more deserving of the death penalty. Then the defense has the opportunity to show mitigation. Perhaps extenuating circumstances about the defendant's prior life or about the crime itself. And then the jury makes that determination between death or life without possibility of parole. Then as Justice Kennard has described, there is an automatic appeal, even if the defendant should not want to appeal, because of the importance of the punishment imposed. It goes straight to this court and we review the entire transcript, which may involve anywhere from several thousand pages to over a hundred thousand pages and we write an opinion. And we can affirm it, or set aside the death penalty if there is error at the penalty phase. Then there is potential to go up to the United States Supreme Court if there is a federal issue and then the case can be reopened on habeas corpus--actually two of our cases in this morning's session involve this--where there has been an automatic appeal and there are matters outside the actual record of the automatic appeal, outside the transcript, that are raised by the attorneys and then we sometimes have trial judge take additional evidence and we determine based on that and the questions of law, whether to reopen the case, which can involve setting aside just the death penalty or the entire conviction. So that is basically the way the death penalty cases are handled both in the trial level and on appeal.

Thank you.

STUDENT: Thank you.

CHIEF JUSTICE: We can entertain another question.

STUDENT: Good morning, Mr. Chief Justice and Associate Justices of the Supreme Court. My name is Leland Rollings and I am from Miramar Community College and I would like to ask: Do the rich and famous receive more favorable treatment in the courts than the average citizen?

CHIEF JUSTICE: Justice Kennard.

JUSTICE KENNARD: Whew. What an intriguing question. In our courts the same laws and rules apply to rich and poor alike. And judges do try to treat everyone appearing before them in a fair and impartial manner, regardless of wealth or social status. But wealth does have its advantages. Litigation is expensive and when you have a lot of money and you are charged, say with a crime, you can afford to hire the most experienced and most highly skilled attorneys. But what if you cannot afford to hire a lawyer? In criminal cases, every defendant has a constitutional right to be represented by an attorney. And if you cannot afford one, the court will appoint an attorney at state's expense. In noncriminal cases, persons who cannot afford an attorney can try to seek legal advice from such organizations as legal aid societies and similar outfits. In this and other ways our courts and the members of the legal profession always strive to provide equal justice for all.

Thank you for your question.

CHIEF JUSTICE: Thank you. And we will now entertain one last question.

STUDENT: Mr. Chief Justice and Associate Justices of the Supreme Court. My name is Jacqueline Lisle and I am from Preuss School UCSD and I would like to ask: Is it more democratic to interpret the Constitution based on contemporary views or on its original intent?

CHIEF JUSTICE: Well, this tough question is directed to Justice Baxter.

JUSTICE BAXTER: Thanks for the zinger. I think we start off with one basic notion and that is the Constitution does not in all respects provide for democratic review. All we need to do is to focus on the State of California. California for instance, has well over 35 million people and State of Wyoming has a population of less than half a million people. Both states are entitled under our Constitution to United States senators, so each one of those senators would have an equal vote, although the people that they represent are vastly different in number. Getting to the point of your question, it is very difficult to answer. And I would say that the short answer is, it depends. I will give you a few examples. The Constitution, of course, does provide protection against unreasonable searches of your person, and of your home, of your papers and of your effects. Well, how about e-mail or text messages that are left on your cell phone. Obviously, those things didn't exist in 1791, but the courts have adapted to that situation. And they have, in effect held

that those items are like papers and effects, even though personal computers and cell phones did not exist in 1791. Another example will explain how many judges will look to original intent. The Constitution says that criminals cannot be punished in a cruel and unusual way. The death penalty was not considered cruel and unusual in 1791. But some people say that the death penalty is now viewed as cruel and unusual. So the question is, should judges use contemporary views or the views that existed at the time the Constitution was adopted? Most judges would rely on original intent in that situation. As judges, we are not very good at guessing what most people think about issues that come before us. We are far less qualified in that respect than legislators because they are out mingling among the people, conducting hearings on public policy issues in matters of that sort. And the surest way to determine a contemporary view is to have the electorate vote on that particular issue. So, I guess, my conclusion is that in weighing these considerations, this is a very difficult thing for members of the judiciary and as the Chief Justice said earlier, it is our job to set aside our personal beliefs and interpret the law as best we can.

Thank you.

CHIEF JUSTICE: Thank you for your questions. I want to compliment each of the 10 students who addressed questions to the court, on their very probing and well-phased questions and also to thank the teachers who inspired these students to participate in today's event, in both the asking of questions and their attendance and in the study plans as well as follow-up to the oral argument. At this time I'll ask the Clerk to call this morning calendar.

S082299 In re Peter Sakarias
 on
 Habeas Corpus

S102401 In re Tauno Waidla
 on
 Habeas Corpus

 Cause called. Cliff Gardner argued for Petitioner Sakarias.
 Sean K. Kennedy, Office of the Federal Public Defender, argued
 for Petitioner Waidla.

 Michael C. Keller, Office of the Attorney General, opened
 argument for Respondent.

 Hyman Sisman, Office of the District Attorney, continued
 argument for Respondent.

 Mr. Gardner replied.

 Mr. Kennedy replied.

 Cause submitted.

S117568 The People, Plaintiff and Respondent
 v.

 David V. Carson, Defendant and Appellant

 Cause called. Xiomara Costello, Office of the Attorney General,
 argued for Respondent.

 Chris R. Redburn argued for Appellant.

 Ms. Costello replied.

 Cause submitted.

S116670 In re Anderson Hawthorne
 on
 Habeas Corpus

 Cause called. Harry Simon, Office of the Federal Public Defender,
 argued for Petitioner.

 James Ellis, appeared for Amicus Curiae American Association.

 Robert S. Henry, Office of the Attorney General, argued for
 Respondent.

 Mr. Simon replied.

 Cause submitted.

Court recessed until 2:15 p.m. this date.

Court reconvened pursuant to recess.

Members of the Court and Officers present as first shown.

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| S121400 | Varian Medical Systems, Inc., et al., Plaintiffs and Respondents
v.
Michelangelo Delfino, et al., Defendants and Appellants
Cause called. Jeremy B. Rosen argued for Appellants.
Lynne Hermle argued for Respondents.
Mr. Rosen replied.
Cause submitted. |
| S033440 | The People, Respondent
v.
Vicente Figueroa Benavides, Appellant
Cause called. Kent Barkhurst, Office of the State Public Defender,
argued for Appellant.
Kelly Lebel, Office of the Attorney General, argued for
Respondent.
Mr. Barkhurst replied.
Cause submitted. |

Court recessed until 9:00 a.m., Wednesday, December 8, 2004.

S009038

PEOPLE v. TURNER (RICHARD DEAN)
Order filed

Court's 150-day statement.

S113201

B156438 Second Appellate District,
Division Three

HONEYWELL v. W.C.A.B. (WAGNER)
Order filed

The application of California Self –Insurers
Association for permission to file an amicus
curiae brief in support of petitioner is hereby
denied as untimely.